

KAYE | SCHOLER LLP

MEMO ENDORSED

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The application is ☒ granted.  
denied.

April 15, 2014

The Honorable Nelson S. Roman  
United States District Judge  
Southern District of New York  
300 Quarropas St.  
White Plains, NY 10601-4150

Nelson S. Roman, U.S.D.J.

Dated: April 16, 2014

White Plains, New York 10601

Defendant's application to file  
this response to Plaintiff's Sur-reply  
is Granted. No further briefing  
is necessary.

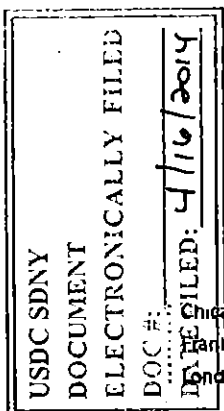
Re: *Deylii v. Novartis Pharmaceuticals Corporation*, Case No. 13-cv-06669-NSR

Dear Judge Roman:

On behalf of defendant Novartis Pharmaceuticals Corporation ("NPC"), we respectfully request leave to file this brief response to plaintiff Adarella Deylii's sur-reply, which was supposed to be limited to a single issue, namely the fact that the *Velez* release was contained in the "Settlement Agreement and Release" signed by class counsel (on behalf of Ms. Deylii and other class members) and by counsel for NPC, and approved by Judge McMahon. This fact is of no moment to the motion to dismiss in this case because the releases in many "opt out" class action settlements are done in this exact way -- by putting the release in the settlement agreement which is then binding on all class members who do not opt out by the deadline set by the court, and then having each class member sign a document when they accept payment of the settlement funds.

That is exactly what happened here. When Ms. Deylii received her check in *Velez* for \$27,157.40 (minus applicable withholdings), her signature appeared below the following language:

By negotiating this check and accepting payment *I agree that I have waived and released the Released Parties from all Released Claims as defined in the Settlement Agreement and in the Notice in this matter.*  
This Release is effective as of the Effective Date.



Los Angeles  
New York  
Palo Alto  
Shanghai  
Washington, DC  
West Palm Beach

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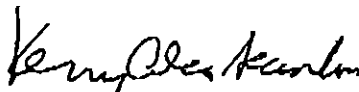
A copy of both sides of the cleared check is enclosed herewith as Exhibit 1. When the check was sent to Ms. Deylii, it included a tax return document, which specifically states that the enclosed check is her "award as part of the Velez, et al. v. Novartis Pharmaceuticals Corp. Class Action Settlement." Exhibit 2. These documents are part and parcel of the *Velez* settlement of which this Court may take judicial notice.

When the language on the check specifically referred to "all Released Claims *as defined in the Settlement Agreement and in the Notice in this matter*" (emphasis added), this was a reference to the same documents we have discussed throughout our opening and reply briefs. Thus, there can be no doubt that Ms. Deylii signed a document proving that she knowingly and voluntarily released "any and all . . . claims of alleged employment discrimination" because that language was included in the documents referenced on the back of the check she endorsed.

Most of plaintiff's sur-reply merely repeats the arguments previously made in her opposition papers, and they fail because releases often are broader than the specific claims in the underlying case.

NPC respectfully requests permission to file a response to plaintiff's sur-reply, which will be exactly the same as the content of this letter and the attachments hereto. We would be able to file that the same day the Court grants leave to do so.

Respectfully submitted,



Kerry Alan Scanlon

cc: Michael D. Diederich, Jr., Counsel for Plaintiff

VIA FACSIMILE

## **EXHIBIT 1**



## **EXHIBIT 2**

